

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0195P
Income Tax
For Tax Year 2002

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ISSUE**I. Tax Administration–Negligence Penalty**

Authority: [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#)

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer protests the imposition of a ten percent negligence penalty. The Indiana Department of Revenue ("Department") issued an assessment for a ten percent negligence penalty for the tax year 2002. Taxpayer's only argument is that it is not the entity responsible for the assessment. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty**DISCUSSION**

The Department issued a proposed assessment of a ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to [IC 6-8.1-10-2.1\(a\)](#), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under [IC 6-8.1-10-2.1\(a\)](#). Taxpayer has not established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is denied.

Posted: 11/01/2006 by Legislative Services Agency

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